ARTICLE ENTRIES ALPHABETIZED BY AUTHOR LAST NAME

Nadja Alexander, *Mobile Mediation: How Technology is Driving the Globalization of ADR*, 27 HAMLINE J. PUB. L. & POL'Y 243 (2006).
The Article focuses on how online dispute resolution (ODR) has influenced the globalization of ADR. It explores the relationship between technology and globalization, and provides some examples of the features of ODR technology that have facilitated the globalization process and revolutionized the mediation process. The article also discusses the challenges that technology poses to the globalization of ADR. The article concludes with a plea for a culturally-inclusive globalization process.
{60} ADR—GENERAL
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY
{124} COMPARISONS: CROSS-CULTURAL

Jennifer Arnette-Mitchell, Note, *State Action Debate Reborn Again: Why the Constitution Should Act as a Checking Mechanism for ICANN's Uniform Dispute Resolution Policy*, 27 HAMLINE J. PUB. L. & POL'Y 307 (2006).
The note argues that the Internet Corporation for Assigned Names and Numbers (ICANN), though a non-profit corporation, is still a state actor. As a state actor, ICANN's Uniform Dispute Resolution Policy (UDRP) process should be regulated by the Constitution. Regulating the UDRP with the Constitution will implement the constitutional norms and values held by society.
{60} ADR—GENERAL
{78} SUBJ MATTER: COMPUTER—INTERNET

Steven Austermiller, Note, *Note from the Field: Mediation in Bosnia and Herzegovina: A Second Application*, 9 YALE HUM. RTS. & DEV. L.J. 132 (2006).
This note discusses the new Bosnia and Herzegovina mediation laws and their potential impact on the judiciary and rule of law. Discussion centers on an historical introduction, the complicated governmental structures, the judicial landscape and current issues of these countries, how mediation can improve the justice system of these countries, as well as a review of new laws that regulate mediation in the courts.
{21} MEDIATION—GENERAL
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL

Kevin Avruch, *Essay: Toward an Expanded "Canon" of Negotiation Theory: Identity, Ideological, and Values-Based Conflict and the Need for a new Heuristic*, 89 MARQ. L. REV. 567 (2006).
The author argues that negotiation theory and the "first generation" canon are not fully relevant to conflicts which involve identity, ideology, and value differences. He argues that a new heuristic, built around the problems of values-based conflict, can help to expand the range of relevance of negotiation theory.
{1} NEGOTIATION—GENERAL
{73} SUBJ MATTER: GENERAL

Richard A. Bales, *Contract Formation Issues in Employment Arbitration*, 44 BRANDEIS L.J. 415 (2006).
Bales states that in order for there to be more arbitrable employment claims, employers should give something of considerable value to employees in consideration for their agreement to arbitrate. This, in conjunction with the preemption and separability doctrines, will lead to more arbitrable claims. Bales contends that courts will generally enforce arbitration agreements when they are clearly drafted and employees have ample time to read the agreement.
{44} ARBITRATION—GENERAL
{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Anthony R. Benedetto, *The Impact on "The Vanishing Trial" if People of Faith were Faithful to Religious Principles of Settling Disputes without Litigation*, 6 PEPP. DISP. RESOL. L.J. 253 (2006).
Benedetto discusses whether the number of judicial trials would decrease if religious communities resolved issues within those communities and outside the court setting. The author then addresses the estimated impact of this loss on case law precedent and on the opportunity for a person to utilize a judicial forum. The author provides recommendations to address these specific losses.
{21} MEDIATION—GENERAL
{77} SUBJ MATTER: COMMUNITY
{133} COURT REFORMS
{151} ROLE OF LAWYERS

Ian Best, Casenote, *Recent Development:* Campbell v. Gen. Dynamics Gov't. Sys., 21 OHIO ST. J. ON DISP. RESOL. 1073 (2006).
As a result of *Campbell v. Gen. Dynamics Gov't Sys.*, companies should be more explicit and give more effective notice of arbitration agreements than

mass email to employees. To give newly enacted company policy the effect of law, companies should ensure that employees receive overt and explicit notice of the new policy.
{44} ARBITRATION—GENERAL
{93} SUBJ MATTER: LABOR—GENERAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Barbara Black & Jill Gross, *The Explained Award of Damocles: Protection or Peril in Securities Arbitration*, 34 SEC. REG. L.J., Spring, 17 (2006).
In their article, Black and Gross discuss changes to the National Association of Securities Dealers arbitration forum since arbitration of customer disputes with brokerage firms became mandatory in 1987. While some reforms benefit all participants, many recent reforms were made in response to customer distrust of the industry-sponsored arbitration forum. The goal of these rules is to increase investor confidence in the fairness of the forum.
{44} ARBITRATION—GENERAL
{106} SUBJ MATTER: SECURITIES
{146} ORGANIZATION POLICIES & RULES

John T. Blankenship, *Developing Your ADR Attitude: Med-Arb, a Template for Adaptive ADR*, 42 TENN. B. J., November, 28 (2006).
The author discusses how med-arb (mediation-arbitration) functions. Responding to criticism that this ADR method is unworkable, the author proposes looking at it from a different angle that does not focus so intensely on the process.
{60} ADR—GENERAL
{73} SUBJ MATTER: GENERAL
{134} DISPUTE PREVENTION

Kristen Blankley, Note, *Be More Specific! Can Writing a Detailed Arbitration Agreement Expand Judicial Review Under the Federal Arbitration Act?*, 2 SETON HALL CIR. REV. 391 (2006).
Parties can contract to expand judicial review if they draft arbitration agreements in this manner. This is possible even in circuits that do not allow for contractually enforced expanded judicial review. What makes this possible is that the arbitration agreements can be written so as to instruct the arbitrator to fulfill a specific duty, especially present when large corporate parties draft the agreements.
{44} ARBITRATION—GENERAL
{73} SUBJ MATTER: GENERAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Charles A. Borell, *How Unions Can Improve Their Success Rate in Labor Arbitration*, 61 DISP. RESOL. J., Feb.–April, 28 (2006).
This article presents results of a survey of professional arbitrators and reaches conclusions regarding union behavior in pursuing arbitration. Includes recommendations regarding when to arbitrate, how to choose an arbitrator, and what factors should affect the choice of an advocate.
{44} ARBITRATION—GENERAL
{95} SUBJ MATTER: LABOR—MANAGEMENT (UNION)

Andrea M. Braeutigam, *Fusses That Fit Online: Online Mediation in Non-Commercial Contexts*, 5 APPALACHIAN J.L. 275 (2006).
This article defines and analyzes the use of online mediation in resolving disputes. It particularly looks at examples of non-commercial disputes as good candidates for online mediation, and further discusses the future of online mediation in the wake of other dispute resolution techniques.
{21} MEDIATION—GENERAL
{78} SUBJ MATTER: COMPUTER—INTERNET
{73} SUBJ MATTER: GENERAL

Wayne D. Brazil, *Should Court-Sponsored ADR Survive?*, 21 OHIO ST. J. ON DISP. RESOL. 241 (2006).
In the context of the private sector, docket-oriented court ADR programs, and litigant-oriented court programs, this article assesses which offers the most promise for moving mediators and parties beyond the preoccupation of getting a deal and toward the advantages gained from the character of the mediation process. Discussion is given to why the courts should retain ADR programs, what would happen if they did not exist, and why they are important.
{60} ADR—GENERAL
{73} SUBJ MATTER: GENERAL
{127} REQUIREMENTS: MANDATE TO USE

Rachel Brewster, *Rule-Based Dispute Resolution in International Trade Law*, 92 VA. L. REV. 251 (2006).
Brewster argues that the President of the United States agreed to a rule-based international dispute resolution to gain more control over the national trade policy, although it disadvantaged the United States internationally. The author asserts the international dispute resolution policy influences the state interests and alters domestic politics.
{44} ARBITRATION—GENERAL
{92} SUBJ MATTER: INT'L
{75} SUBJ MATTER: COMMERCIAL

{136} ECONOMIC ADVANTAGES OF ADR

Kelly Browe Olson, *The Importance of Using Alternative Dispute Resolution Techniques and Processes in The Ethical and Informed Representation of Children*, 6 NEV. L.J. 1333 (2006).
The attorneys in attendance at the UNLV conference on Representing Children in Families crafted recommendations for attorneys and other professionals who work with children. This article analyzes those recommendations, giving particular attention to the important benefits of alternative dispute resolution techniques and processes for children and families.
{60} ADR—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{151} ROLE OF LAWYERS
{137} EFFECT OF PROCESS ON NON-PARTICIPATORY PARTIES

Ronald C. Brown, *China's Collective Contract Provisions: Can Collective Negotiations Embody Collective Bargaining?*, 16 DUKE J. COMP. & INT'L L., Winter, 35 (2006).
This article examines collective negotiations in the Chinese labor market, comparing China's 2004 Collective Contract Provisions to U.S. collective bargaining and the International Labor Organization's standards. The author explores the process of labor negotiations in China and the possibilities for labor reform there.
{1} NEGOTIATION—GENERAL
{93} SUBJ MATTER: LABOR—GENERAL
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL

Carole J. Buckner, *Due Process in Class Arbitration*, 58 FLA. L. REV. 185 (2006).
This article focuses on the role of due process in class arbitrations. It is divided into three subsections that examine whether due process is required in class arbitration under the state action doctrine, whether providing due process in class arbitration is appropriate, and concludes by examining three existing approaches to providing due process protections in class arbitration.
{44} ARBITRATION—GENERAL
{93} SUBJ MATTER: LABOR—GENERAL
{79} SUBJ MATTER: CONSUMER
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Richard M. Calkins, *Caucus Mediation—Putting Conciliation Back Into the Process: The Peacemaking Approach to Resolution, Peace, and Healing*, 54 DRAKE L. REV. 259 (2006).
In Calkin's view, while ADR is a preferable approach to litigation because it decreases costs and stress on the parties, the current state of ADR is far more adversarial than it could be. In this article, he explores the mediator as peacemaker in the context of caucus mediation and the nonadversarial tools available to the peacemaker.
{21} MEDIATION—GENERAL
{73} SUBJ MATTER: GENERAL
{151} ROLE OF LAWYERS

Henry Chen, *The Mediation Approach: Representing Clients with Mental Illness in Civil Commitment Proceedings*, 19 GEO. J. LEGAL ETHICS 599 (2006).
Chen explores the civil commitment process and proposes mediation as a third approach that lawyers may use when dealing with mentally ill clients. The author discusses the traditional approaches to commitment proceedings and notes that these adversarial approaches may have negative therapeutic consequences, which may be avoided by using mediation.
{21} MEDIATION—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{151} ROLE OF LAWYERS

Miriam A. Cherry, *No Longer Just Company Men: The Flexible Workforce and Employment Discrimination*, 27 BERKELEY J. EMP. & LAB. L. 209 (2006).
In this article the author examines trends in the American workplace and concludes that traditional models for regulating the employment relationship are outmoded, and proposes new theories around flexible work arrangements. The article discusses the debate over mandatory arbitration as part of a larger conversation that needs to be had within the ADR community. This article discusses the flaws of pre-dispute mandatory arbitration, which is often forced upon workers as a condition of employment. The author emphasizes that ADR should be voluntary in the workplace because pre-dispute mandatory arbitration is often stacked against the employee.
{44} ARBITRATION—GENERAL
{94} SUBJ MATTER: LABOR—DISCRIMINATION
{127} REQUIREMENTS: MANDATE TO USE
{136} ECONOMIC ADVANTAGES OF ADR

Virtus Chitoo, *Determination, Interpretation and Application of Substantive Law in Foreign Investment Treaty Arbitrations*, 23 J. INT'L ARB., 267 (2006).
This article discusses the choice of law when an international treaty has given foreign investors the right to arbitration. Alleged breaches are prima facie covered by international law. But if the treaty does not provide for choice of law, the arbitrator must make a case-by-case determination. If the treaty does make a choice of law, the arbitrator must apply all applicable law.
{44} ARBITRATION—GENERAL
{106} SUBJ MATTER: SECURITIES
{92} SUBJ MATTER: INT'L

Oswin Chrisman, Gay Cox & Petra Novotna, *Collaborative Practice Mediation: Are We Ready to Serve this Emerging Market?*, 6 PEPP. DISP. RESOL. L.J. 451 (2006).
Collaborative practice is viewed as a good alternative to international litigation. Many facets of collaborative practice are described. Collaborative practice is examined in relation to other ADR practices.
{53} COLLABORATIVE LAW—GENERAL
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Kevin M. Christensen, *Arbitration Agreements in Employment Contracts*, 31 EMP. REL. L.J., Spring, 3 (2006).
In this article Christensen examines the law concerning arbitration agreements in employment contracts. The article discusses the ramifications of recent decisions by the United States Supreme Court, the Ninth Circuit Court of Appeals, and the California Supreme Court. In particular, the article focuses on how to draft a valid arbitration agreement in light of recent changes in the law.
{44} ARBITRATION—GENERAL
{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)
{133} COURT REFORMS

Sara Cobb, *A Developmental Approach to Turning Points: "Irony" as an Ethics for Negotiation Pragmatics*, 11 HARV. NEGOT. L. REV. 147 (2006).
Cobb identifies how irony generates "turning points" in negotiations that contribute to positive relational development. She further argues that ironic practice, which contributes to relational or narrative development, does just that through the re-positioning of "Others" as legitimate and through the re-positioning of the "Self" as less than perfect.
{1} NEGOTIATION—GENERAL

{73} SUBJ MATTER: GENERAL
{138} ETHICS: GENERAL

James R. Cohen & Peter N. Thompson, *Disputing Irony: A Systematic Look at Litigation About Mediation*, 11 HARV. NEGOT. L. REV. 43 (2006).
The authors in this article discuss to what extent the mediation process creates litigation, where this litigation is taking place, and what the litigation concerns. Also discussed is the balance between the need for confidentiality in the mediation process and the need for evidence when litigation becomes an issue in later litigation.
{21} MEDIATION—GENERAL
{73} SUBJ MATTER: GENERAL
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Amy J. Cohen, *Debating the Globalization of U.S. Mediation: Politics, Power, and Practice in Nepal*, 11 HARV. NEGOT. L. REV. 295 (2006).
This article analyzes the current debate about transnational alternative dispute resolution. The author discusses the arguments supporting and opposing transnational ADR and provides insight as to why the reasoning of both sides might be considered flawed.
{60} ADR—GENERAL
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL
{155} TEACHING

John Conbere & Alla Heorhiadi, *Is ADR Ready to be Globalized: Reflections on Intercultural Approaches to Conflict Management*, 27 HAMLINE J. PUB. L. & POL'Y 263 (2006).
The authors suggest that the cultural practices and history of the Ukraine have led to a nation in which many conflicts are not amenable to ADR. They present four theories for this finding, and conclude that the Ukrainians need to come to see a need for ADR before they can explore adaptations to suit their culture.
{60} ADR—GENERAL
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL

Christina Cooley, *Maximizing Patient Autonomy through Expanded Medical Surrogacy Mediation*, 30 LAW & PSYCHOL. REV. 229 (2006).
Cooley discusses end of life decisionmaking and advocates for a model that maximizes patient autonomy. In doing so, Cooley analyzes surrogate and physician decisionmaking under the hierarchical model, reasoning that they

undermine the goal of patient autonomy. The article concludes with suggestions to improve advance directives by incorporating the consensus based decisionmaking model.
{21} MEDIATION—GENERAL
{89} SUBJ MATTER: HOSPITALS
{146} ORGANIZATION POLICIES & RULES

Alejandro V. Cortes, Note, *The H-2A Farmworker: The Latest Incarnation of the Judicially Handicapped and Why the Use of Mediation to Resolve Employment Disputes Will Improve Their Rights*, 21 OHIO ST. J. ON DISP. RESOL. 409 (2006).
This note discusses reforms to the H-2A farmworker program and focuses on an amendment that would allow a free mediation option for H-2A workers who have claims against their agricultural employer. The note asserts that the process of mediation is better suited to resolve disputes in the context of the H-2A program. The author encourages the participation and presence of the farmworker and agricultural employer at the mediation, and suggests that the mediator encourage such participation. The note looks to the use of mediation to resolve sexual harassment disputes and concludes that mediation can and should be used to resolve employment disputes between agricultural growers and H-2A farmworkers. The author argues that an agricultural employer would choose mediation to save time and keep costs down by avoiding litigation.
{21} MEDIATION—GENERAL
{86} SUBJ MATTER: FARM
{93} SUBJ MATTER: LABOR—GENERAL
{144} LEGISLATION

Barbara Cosens, Note, *Truth or Consequences: Settling Water Disputes in the Face of Uncertainty*, 42 IDAHO L. J: 717 (2006).
The author analyzes how legal and scientific uncertainty impact natural resource dispute resolution.
{21} MEDIATION—GENERAL
{84} SUBJ MATTER: ENVIRONMENT
{127} REQUIREMENTS: MANDATE TO USE

John C. Cratsley, *Judicial Ethics and Judicial Settlement Practices: Time for Two Strangers to Meet*, 21 OHIO ST. J. ON DISP. RESOL. 569 (2006).
Judges presiding over cases after participating in settlement discussions with the parties have become increasingly common as alternative dispute resolution has grown over the past two decades. This article advocates a ban

on judges trying cases when settlement fails. It also lays forth other ethical guidelines for judges when they participate in settlement activity.
{21} MEDIATION—GENERAL
{73} SUBJ MATTER: GENERAL
{138} ETHICS: GENERAL
{123} SETTLEMENT: PRESSURES TO SETTLE

Susan Daicoff, *Law as a Healing Profession: The "Comprehensive Law Movement"*, 6 PEPP. DISP. RESOL. L.J. 1 (2006).
In this article, Professor Daicoff discusses the emergence of the "Comprehensive Law Movement," or the new movement to take a more comprehensive, humanistic approach to resolving legal disputes. Professor Daicoff argues that some ADR approaches take a holistic, healing approach, which can be a preferable option to heavy litigation for some clients. The author hopes that many of the Collaborative Law "vectors" will continue to gain popularity and take hold in major U.S. law offices.
{60} ADR—GENERAL
{77} SUBJ MATTER: COMMUNITY
{133} COURT REFORMS

Ashley A. Davenport, Note, *Forgive and Forget: Recognition for Error and Use of Apology as Preemptive Steps to ADR or Litigation in Medical Malpractice Cases*, 6 PEPP. DISP. RESOL. L.J. 81 (2006).
This note asks why it is the natural response to an error in the health care system to inevitably blame the physician. A leading study looks at the effects of apology on settlement decisionmaking using a basic personal injury dispute as her example. When the participants receiving no apology were compared with the groups receiving partial and full apologies, the study found stark contrasts in the final acceptance of the settlement offer.
{60} ADR—GENERAL
{98} SUBJ MATTER: MEDICAL MALPRACTICE

Shawn P. Davisson, Note, *Privatization and Self-Determination in the Circuits: Utilizing the Private Sector Within the Evolving Framework of Federal Appellate Mediation*, 21 OHIO ST. J. ON DISP. RESOL. 953 (2006).
This article discusses the benefits of the use of private mediation in the federal circuit courts. Davisson argues that party empowerment is essential in mediation. This article suggests that as mandatory court-annexed mediation increases, the option of private mediation should be used by the courts. Such an option will maintain the essential party empowerment element of mediation.
{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL
{125} COMPARISONS: HISTORICAL
{133} COURT REFORMS

Connie de la Bega & Chelsea E. Haley Nelson, *The Role of Women in Peacekeeping and Peacemaking: Devising Solutions to the Demand Side of Trafficking*, 12 WM. & MARY J. WOMEN & L. 437 (2006).
This article discusses how trafficking of women and children cannot be eliminated unless women are included in all levels of peacemaking processes concerning international communities, especially concerning the demand side of trafficking. The authors recommend that post-conflict states and the U.N. should utilize multiple accountability components in order to resolve the issues of trafficking.
{60} ADR—GENERAL
{92} SUBJ MATTER: INT'L
{82} SUBJ MATTER: CRIMINAL
{134} DISPUTE PREVENTION

John Diaconis, *Mediating with Municipalities: Effective Use of ADR to Resolve Employment and Policy Disputes*, 33 WESTCHESTER B.J. 19 (2006).
Mediation should be used by municipalities to resolve litigated cases and public policy disputes. Mediation of litigated cases should always be considered because it saves money. Tips for mediation are provided.
{21} MEDIATION—GENERAL
{87} SUBJ MATTER: GOV'T
{136} ECONOMIC ADVANTAGES OF ADR

William S. Dodge, *Investor-State Dispute Settlement Between Developed Countries: Reflections on the Australia-United States Free Trade Agreement*, 39 VAND. J. TRANSNAT'L L., Jan., 1 (2006).
Free trade agreements often contain investor protection provisions, and the resolution of these diputes has proven problematic. For disputes between developed countries, the author offers a way to reach a compromise and reap the benefits from both direct claims and local remedies rules. The author advocates investors file disputes directly in the host country's court, and could only then go before an international arbitration tribunal after exhausting local remedies.
{44} ARBITRATION—GENERAL
{92} SUBJ MATTER: INT'L
{87} SUBJ MATTER: GOV'T

Jeffrey A. Dodge, Note, *Same-Sex Marriage and Divorce: A Proposal for Child Custody Mediation*, 44 FAM. CT. REV., January (No.1), 87 (2006).
In this note, Dodge examines the controversial issue of same-sex couples. This note advocates for the creation of mediation programs in American jurisdictions with same-sex marriage, to specifically determine child custody agreements upon divorce.
{21} MEDIATION—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{101} SUBJ MATTER: PROBATE
{138} ETHICS: GENERAL

Laurie Kratky Doré, *Public Courts Versus Private Justice: It's Time To Let Some Sun Shine in on Alternative Dispute Resolution*, 81 CHI.-KENT L. REV. 463 (2006).
In this article, Doré discusses current sunshine reforms in regards to litigation confidentiality. She compares those reforms with the secret environment of ADR, identifying situations in which some courts have attempted to regulate ADR secrecy when there are broad public policy interests. Doré proposes an increase in the transparency of ADR for claims that have a legitimate public interest.
{60} ADR—GENERAL
{102} SUBJ MATTER: PUBLIC POLICY
{132} CONFIDENTIALITY
{133} COURT REFORMS

Leslie Ann Dougiello, Casenote, Jacobs v. United States Track & Field: *Inequitable Procedures Win Gold in Olympic Arbitration*, 24 QUINNIPIAC L. REV. 887 (2006).
This casenote examines the Second Circuit's opinion in *Jacobs v. USA Track & Field.* The author argues that after failing a drug test, Ms. Jacobs was denied the necessary arbitration procedure, thus causing her to lose her appeal in the Second Circuit. The author also argues that the broader appeal system for those athletes who fail drug tests must be changed to allow athletes to have a fair arbitration proceeding to present their case.
{44} ARBITRATION—GENERAL
{107} SUBJ MATTER: SPORTS & ENTERTAINMENT
{147} POWER IMBALANCE

Christopher R. Drahozal, *Arbitration Costs and Contingent Fee Agreements*, 59 VAND. L. REV. 729 (2006).
Despite lower total costs in arbitration, some parties are unable to proceed because of up-front costs. In litigation, contingent fee agreements allow a

party to defer all or many costs until a later date. The author contends that criticism of arbitration because of up-front cost is misguided. Under both the expected value and option models, the decision to arbitrate is based on the total cost of arbitration.
{44} ARBITRATION—GENERAL
{102} SUBJ MATTER: PUBLIC POLICY
{136} ECONOMIC ADVANTAGES OF ADR

Patrick Drake, Note, *Victim-Offender Mediation in Texas: When Eye for Eye Becomes Eye to Eye*, 47 S. TEX. L. REV. 647 (2006).
This note discusses the benefits of Victim-Offender Mediation, and what situations are appropriate for V.O.M. instead of the traditional harsh treatment of violent or repeat defenders in Texas. The note further argues that V.O.M., when used in appropriate circumstances, can rehabilitate offenders and restore victims to a more peaceful existence.
{21} MEDIATION—GENERAL
{82} SUBJ MATTER: CRIMINAL

Kenneth F. Dunham, *Sailing Around Erie: The Emergence of a Federal General Common Law of Arbitration*, 6 PEPP. DISP. RESOL. L.J. 197 (2006).
This article details the conflict between the Erie Doctrine and the power of the federal courts to interpret substantive portions of the Federal Arbitration Act. Taking an historical perspective, the author argues that decisions granting substantive law status to the FAA do not come as a surprise.
{44} ARBITRATION—GENERAL
{73} SUBJ MATTER: GENERAL
{125} COMPARISONS: HISTORICAL
{144} LEGISLATION

Teressa L. Elliot, *Responsibility of the Courts in Motions to Compel Arbitration*, 32 OHIO N.U. L. REV. 89 (2006).
This article argues that courts should follow the narrow view of the Federal Arbitration Act when they are dealing with a Section IV motion to compel arbitration. The article further argues that the narrow view of Section IV best conforms to the United States Supreme Court precedent as well as preserves the viability of arbitration.
{44} ARBITRATION—GENERAL
{73} SUBJ MATTER: GENERAL

Nancy D. Erbe, *Appreciating Mediation's Global Role in Promoting Good Governance*, 11 HARV. NEGOT. L. REV. 355 (2006).
This article argues that the growing use of mediation and good governance in the global context should be subject to strong scrutiny, due to the potential for abuse by stakeholders.
{21} MEDIATION—GENERAL
{92} SUBJ MATTER: INT'L

Ruth Fenton, *A Civil Matter for a Common Expert: How Should Parties and Tribunals Use Experts in International Commercial Arbitration*, 6 PEPP. DISP. RESOL. L.J. 279 (2006).
Fenton discusses the circumstances that may require an expert, and the arbitration rules that assist parties and arbitrators in appointing an appropriate expert. The article also looks at differences and similarities between civil and common law approaches to the use of experts in international commercial arbitration. Any strict introduction of specific practices for international arbitration may have a detrimental effect.
{44} ARBITRATION—GENERAL
{92} SUBJ MATTER: INT'L
{75} SUBJ MATTER: COMMERCIAL

Jennie K. Ferguson, Note, *Can Arbitration Play a Saving Role in Women's Health? The Use of Arbitration in the OB/GYN Specialty*, 21 OHIO ST. J. ON DISP. RESOL. 1005 (2006).
The author proposes that establishment and practice of arbitration agreements in the OB/GYN field will reduce insurance premiums and provide better care for patients. Due to a dramatic increase in insurance premiums, many doctors in the United States have dropped obstetrics from their practice. The use of contractual, binding arbitration clauses will allow patients to settle disputes while curtailing future increases in the cost of insurance.
{44} ARBITRATION—GENERAL
{98} SUBJ MATTER: MEDICAL MALPRACTICE
{91} SUBJ MATTER: INSURANCE
{136} ECONOMIC ADVANTAGES OF ADR

Ralph Fischer, *The Expansion of International Property Rights by International Agreement: A Case Study Comparing Chile and Australia's Bilateral FTA Negotiations with the U.S.*, 28 LOY. L.A. INT'L & COMP. L. REV. 129 (2006).
Once the TRIPS agreement was signed, the U.S. began to enter into bilateral agreements with other nations regarding intellectual property rights. This is a case study comparing U.S. negotiations with a developing country, Chile,

versus a developed country, Australia. The case study reveals that the developing countries are not as unsophisticated as commenters make them out to be.
{1} NEGOTIATION—GENERAL
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL

Chad Ford, *Peace and Hoops: Basketball as a Role Player in Sustainable Peace-Building*, 42 WILLAMETTE L. REV. 709 (2006).
Ford discusses the positive role sports can have on the conflict resolution process by considering how the Playing for Peace organization works in helping Israeli and Palestinian teenagers. He argues that sports training can be used as a crucial, albeit informal, part of the peacebuilding process along with formal negotiations.
{60} ADR—GENERAL
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL
{134} DISPUTE PREVENTION

David A. Gantz, *An Appellate Mechanism for Review of Arbitral Decisions in Investor-State Disputes: Prospects and Challenges*, 39 VAND. J. TRANSNAT'L L., Jan., 39 (2006).
Given the large and still increasing number of complaints in investor-state arbitration, there is a growing concern with the lack of consistency and accuracy from arbitral panels. There is a growing desire for an appellate mechanism for these awards. In the view of the author, the investment appellate mechanism could benefit goverments and the investment community while overcoming various deficiencies.
{44} ARBITRATION—GENERAL
{92} SUBJ MATTER: INT'L
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

James Gathii, *The Sanctity of Sovereign Loan Contracts and Its Origins in Enforcement Litigation*, 38 GEO. WASH. INT'L L. REV. 251 (2006).
This article looks at corporate loan contract litigation and how New York law is too hard on foreign soveriegns in conflict with New York creditors by using the sanctity of contract doctrine. Gathii recommends using international commercial law and arbitration instead of New York law in order to protect foreign sovereign debtors, especially in cases of inadvertent default.
{44} ARBITRATION—GENERAL
{75} SUBJ MATTER: COMMERCIAL

{92} SUBJ MATTER: INT'L
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Alisa Geller, Note, *In the Aftermath of the Terri Schiavo Case: Resolving End-of-Life Disputes Through Alternative Dispute Resolution*, 6 PEPP. DISP. RESOL. L.J. 63 (2006).
ADR accomplishes the resolution of differences regarding end-of-life decisions outside of a courtroom setting though methods which include negotiation and mediation. ADR enables an emotional resolution by facilitating the grieving process. If, however, after exhausting the methods of ADR, resolution had not been achieved, formal litigation remains an option. The author advises first utilizing a "multi-modal" format of ADR, including modified negotiation or bioethics mediation.
{60} ADR—GENERAL
{102} SUBJ MATTER: PUBLIC POLICY
{138} ETHICS: GENERAL

Patrick Gill, *When Confidentiality is not Essential to Mediation and Competing Interests Necessitate Disclosure*, 2006 J. DISP. RESOL. 291 (2006).
Gill explores the element of confidentiality in mediation, focusing on the criminal case of *State v. Williams*, and argues that confidentiality should not be an absolute requirement. When confidentiality needs prevent a defendant from putting on a full defense, interests in preserving mediation confidentiality must give way to Constitutional rights afforded criminal defendants and allow the evidence from the mediation to be presented.
{21} MEDIATION—GENERAL
{82} SUBJ MATTER: CRIMINAL
{132} CONFIDENTIALITY

Eric T. Gilson, *Exploring the Court of Arbitration for Sport*, 98 LAW LIBR. J. 506 (2006).
The author discusses the pertinent features of the Court of Arbitration for Sport, which was created to preside over a wide range of international sports disputes. He describes its pertinent features, and gives a list of annotated sources discussing the Court.
{44} ARBITRATION—GENERAL
{107} SUBJ MATTER: SPORTS & ENTERTAINMENT
{146} ORGANIZATION POLICIES & RULES

J. Maria Glover, Note, *Beyond Unconscionability: Class Action Waivers and Mandatory Arbitration Agreements*, 59 VAND. L. REV. 1735 (2006).
This note shows the problem in corporate law disputes based on standard form contracts which increasingly have mandatory arbitration clauses with class action prohibitions in them. This creates a problem for disputants who need a class action to have any voice in corporate arbitration. Glover concludes that class action waivers should often be invalidated by courts when they infringe the rights of disputants.
{44} ARBITRATION—GENERAL
{81} SUBJ MATTER: CORPORATE
{126} REQUIREMENTS: CONTRACTUAL CLAUSES
{147} POWER IMBALANCE

William B. Gould, IV, *Kissing Cousins? The Federal Arbitration Act and Modern Labor Arbitration*, 55 EMORY L. J. 609 (2006).
Professor Gould discusses the law and practice of labor arbitration since the passage of the 1925 Federal Arbitration Act. The author then examines some of the unanticipated forks in the road since its enactment. Finally the author finishes with the direction which he would like to see the law and practice of labor arbitration take in the future.
{44} ARBITRATION—GENERAL
{93} SUBJ MATTER: LABOR—GENERAL
{128} REQUIREMENTS: STATUTORY OR RULES
{144} LEGISLATION

Leonardo D. Graffi, *Securing Harmonized Effects of Arbitration Agreements Under the New York Convention*, 28 HOUS. J. INT'L L. 663 (2006).
Arbitration has become a common way of resolving international disputes. The international legal community must continue to improve the arbitration process, as the New York Convention does not provide a complete solution. The author identifies several substantive areas in which the arbitration process needs improvement and proposes suggestions.
{44} ARBITRATION—GENERAL
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL

Anthony J. Greco, *Professional Fees Associated with Collaborative Divorce Resolution: The Evidence to Date*, 13 J. LEGAL ECON., Sept., 75 (2006).
Greco analyzes the economic costs of divorce in the United States. He concludes that the existing studies show that economic costs of divorce

within collaborative approaches are lower than those of contested divorces. He argues that in a collaborative divorce an entire team of professionals work with the parties in a nonadversarial manner towards a mutually agreeable resolution, while taking into consideration all costs of divorce.
{53} COLLABORATIVE LAW—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{136} ECONOMIC ADVANTAGES OF ADR

K. Heidi Gudgell, Steven C. Moore & Geoffrey Whiting, Note, *The Nez Perce Tribe's Perspective on the Settlement of its Water Right Claims in the Snake River Basin Adjudication*, 42 IDAHO L.J. 563 (2006).
The authors examine the Nez Perce Tribe's perspective of the Snake River Basin Adjudication by investigating the tribe's history and the nature and purpose of the rights reserved by the tribe in the Treaties of 1855 and 1863.
{21} MEDIATION—GENERAL
{84} SUBJ MATTER: ENVIRONMENT
{127} REQUIREMENTS: MANDATE TO USE

Fred Hagans & Jennifer B. Rustay, *Class Actions in Arbitrations.*, 25 REV. LITIG., Spring, 293 (2006).
This article addresses the emerging issues of class actions in arbitration proceedings. The author notes that when a party is faced with an arbitration clause that is silent as to class arbitration, courts will generally let the arbitrator decide if the case can proceed as a class action.
{44} ARBITRATION—GENERAL
{73} SUBJ MATTER: GENERAL
{146} ORGANIZATION POLICIES & RULES

Mark J. Hanson, *Moving Forward Together: The LGBT Community and the Family Mediation Field*, 6 PEPP. DISP. RESOL. L.J. 295 (2006).
Hanson analyzes the use of mediation as a preferred way to settle family disputes for the LGBT community, which is often unable to access the court system. Despite the fact that family law principles may not apply, an advantage to mediation exists because LGBT couples have more freedom to explore creative solutions on their own. Family mediators should be taught how issues of gender and sexual orientation impact mediation.
{21} MEDIATION—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{76} SUBJ MATTER: CIVIL RIGHTS

Ryan Hatch, Note, *Coming Together to Resolve Police Misconduct: The Emergence of Mediation as a New Solution*, 21 OHIO ST. J. ON DISP. RESOL. 447 (2006).
This note discusses the emergence of mediation as a means to resolve police misconduct issues. An important factor in effective mediation in police misconduct is the selection of a mediator whom both parties respect. This mediator is someone who cares about both parties, treats them impartially, is honest, and will protect each party during the mediation session.
{21} MEDIATION—GENERAL
{82} SUBJ MATTER: CRIMINAL
{138} ETHICS: GENERAL

Barry E. Hill & Nicholas Targ, *Collaborative Problem-Solving: An Option for Preventing and Resolving Environmental Conflicts*, 36 ENVTL. L. REP. 10440 (2006).
The authors provide an analysis of collaborative problem-solving in the environmental dispute context. After providing background information on the environmental movement within the United States and on collaborative problem solving, the article explores the application of collaborative problem solving in environmental disputes and discusses the future use of this approach in the United States.
{53} COLLABORATIVE LAW—GENERAL
{84} SUBJ MATTER: ENVIRONMENT
{146} ORGANIZATION POLICIES & RULES

Stephen Huber, *Fifth Circuit Survey, June 2004–May 2005: Survey Article: The Arbitration Jurisprudence of the Fifth Circuit: Round III*, 38 TEX. TECH L. REV. 535 (2006).
This article is a survey of more than twenty decisions of the Fifth Circuit relating to arbitration. The author describes the three major focuses of this article as: (1) nonstatutory review of commercial arbitration awards, (2) expansive review of labor arbitration awards, and (3) waiver of a contractual right to demand arbitration.
{44} ARBITRATION—GENERAL
{73} SUBJ MATTER: GENERAL
{102} SUBJ MATTER: PUBLIC POLICY
{133} COURT REFORMS

Samuel Issacharoff & Erin F. Delaney, *Credit Card Accountability*, 73 U. CHI. L. REV. 157 (2006).
The authors examine major credit card companies' inclusion of binding arbitration clauses to credit agreements. The authors explore the effect of

binding individual arbitration on consumer class actions that target questionable credit card practices. They also examine the reluctance of courts to look beyond contractual formalism in order to scrutinize the one-sided imposition of terms.
{44} ARBITRATION—GENERAL
{79} SUBJ MATTER: CONSUMER
{126} REQUIREMENTS: CONTRACTUAL CLAUSES
{147} POWER IMBALANCE

Michael I. Kaplan, Comment, *Solving the Pitfalls of Impartiality When Arbitrating in China: How the Lessons of the Soviet Union and Iran Can Provide Solutions to Western Parties Arbitrating in China*, 110 PENN. ST. L. REV. 769 (2006).
The author of this comment offers solutions for ensuring arbitrator neutrality in U.S.-Chinese arbitrations, drawing on the problems and successes of ensuring such neutrality between the U.S. and both Iran and the Soviet Union in the 1980s. In doing so, the author discusses the role of arbitration in the Chinese legal culture and the particular importance of arbitrator neutrality in international business arbitrations
{44} ARBITRATION—GENERAL
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL

Constantine Katsoris, *Roadmap To Securities ADR*, 11 FORDHAM J. CORP. & FIN. L. 413 (2006).
This article discusses the history and development of current arbitration and mediation systems used in securities industry litigation. Katsoris argues against continuing the current arbitration system which strips consumers of their rights, and instead recommends using mediation for all alternative dispute resolution in the field. As arbitration systems go out of style, mediation will be needed to keep the courts from being overloaded.
{21} MEDIATION—GENERAL
{106} SUBJ MATTER: SECURITIES
{125} COMPARISONS: HISTORICAL
{133} COURT REFORMS

William J. Katt, Jr., Note, *The New Paper Chase: Public Access to Trade Agreement Negotiating Documents*, 106 COLUM. L. REV. 679 (2006).
This note examines the secrecy surrounding negotiated trade agreements between the United States and foreign countries. Concerns about accountability and democracy voiced by opponents of secrecy are weighed against the United States' interests in maintaining the secrecy of its

negotiations. The article then argues that Exemption 5 of the Freedom of Information Act is a more appropriate basis for maintaining secrecy than the frequently used Exemption 1 to that Act.
{1} NEGOTIATION—GENERAL
{88} SUBJ MATTER: GOV'T CONTRACTS
{92} SUBJ MATTER: INT'L
{132} CONFIDENTIALITY

Claire R. Kelly, *Power, Linkage and Accommodation: The WTO as an International Actor and Its Influence on Other Actors and Regimes*, 24 BERKELEY J. INT'L L. 79 (2006).
This article asserts that as the WTO has evolved it has become more powerful, expanding its influence by increasing dispute resolution and further harmonization. Its dominance has resulted in calls for linkage with other regimes and some linkage has already occurred. Some potential areas of conflict, linkage, and accommodation between regimes include risk assessment for the imposition of measures permitted under each regime, the underlying objectives, the burden of proof, and dispute resolution. The author affirms that linkage can sidestep conflicts that could lead to real negotiation and resolution of fundamental normative differences. The article discusses WTO negotiations and the WTO's approach to dispute resolution in the context of examining the WTO's choice of law rules and other accomodation models.
{1} NEGOTIATION—GENERAL
{92} SUBJ MATTER: INT'L
{121} SETTLEMENT: AUTHORITY
{146} ORGANIZATION POLICIES & RULES

Andrew Kepper, Note, *Contractual Waiver of Seventh Amendment Rights: Using the Public Rights Doctrine to Justify a Higher Standard of Waiver for Jury-Waiver Clauses than for Arbitration Clauses*, 19 IOWA L. REV. 1345 (2006).
Although the right to a jury trial can be waived through either a contract containing a jury waiver or an arbitration clause, the arbitration clause is more easily enforced. Jury waiver clauses require that a defendant knowingly and voluntarily waive a right to a jury trial, while arbitration clauses only require the establishment of mutual assent. The more stringent requirements in order to enforce jury waiver clauses is consistent with the intended scope of the Seventh Amendment.
{44} ARBITRATION—GENERAL
{76} SUBJ MATTER: CIVIL RIGHTS
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Almas Khan, *The Interaction between Shariah and International Law in Arbitration*, 6 CHI. J. INT'L L. 791 (2006).
In this article, Khan discusses Canada's movement towards applying Shariah, or Islamic law, to adjudicate certain civil disputes in Ontario. The Ontario Arbitration Act allows individuals to agree to vest dispute resolution authority in religious arbitrators. Khan examines shariah's relationship to international law, evaluating possible problems that might result from its use and examining possible solutions to those problems.
{44} ARBITRATION—GENERAL
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL
{128} REQUIREMENTS: STATUTORY OR RULES

Benjamin Klafter, Note, *International Commercial Arbitration as Appellate Review: NAFTA's Chapter 11, Exhaustion of Local Remedies and Res Judicata*, 12 U.C. DAVIS J. INT'L L. & POL'Y 409 (2006).
This note discusses the relationship between domestic courts and NAFTA's Chapter 11 arbitration forums. Beginning with an overview of the arbitration process and of recent decisions on the issue, the author proceeds to analyze how Chapter 11 arbtration panels treat prior domestic court proceedings between the parties and what problems arise due to this treatment.
{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{92} SUBJ MATTER: INT'L
{128} REQUIREMENTS: STATUTORY OR RULES

Ann R. Klee & Duane Mecham, Note, *The Nez Perce Indian Water Right Settlement—Federal Perspective*, 42 IDAHO L.J. 595 (2006).
The authors describe the federal perspective of the Snake River Basin Adjudication mediation by examining the responsibilities the federal government bears in tribal water rights and tracing the role of the federal government in the mediation.
{21} MEDIATION—GENERAL
{84} SUBJ MATTER: ENVIRONMENT
{127} REQUIREMENTS: MANDATE TO USE

Wendy J. Koen, Dennis P. Saccuzzo & Nancy E. Johnson, *Custody Mediation in Violent and Nonviolent Families: Pitfalls and Perils*, 19 AM. J. FAM. L. 253 (2006).
The authors criticize the use of mandatory custody mediation. The article discusses the data that indicates domestic violence is not adequately screened out of the mandatory mediation process. The risks of inequality in custody

mediation dictate that states do not make it mandatory and discourage its use in families with histories of violence.
{21} MEDIATION—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Russell Korobkin, *Psychological Impediments to Mediation Success: Theory and Practice*, 21 OHIO ST. J. ON DISP. RESOL. 281 (2006).
The article examines four categories of psychological biases that impede mediation success: optimistic overconfidence, attribution biases, framing effects, and reactive devaluation. Both problems and suggested prescriptions for mediators to mitigate the problem are offered. Discussion is paid to the four primary types of psychological biases which can also create a second-order impediment to mediation success by undermining disputant perceptions of interactional justice, potentially multiplying the hazards that the first-order biases create.
{21} MEDIATION—GENERAL
{73} SUBJ MATTER: GENERAL

Benjamin Kostrzewa, Comment, *China International Economic Trade Arbitration Commission in 2006: New Rules, Same Results?*, 15 PAC. RIM L. & POL'Y 519 (2006).
Because Chinese economic development outpaced necessary domestic judicial reform, professional arbitration organizations have served as an attractive alternative to deal with foreign commercial disputes, but lack the enforcement power of the Chinese judiciary. This comment analyzes changes to the China International Economic Trade Arbitration Commission, explores efforts to reform the enforcement of arbitration judgments, and identifies remedies to the real and perceived problems that remain.
{44} ARBITRATION—GENERAL
{92} SUBJ MATTER: INT'L
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD
{133} COURT REFORMS

Katherine R. Kruse, *Fortress in the Sand: The Plural Values of Client-Centered Representation*, 12 CLINICAL L. REV. 369 (2006).
In this article, Kruse surveys the history of the client-centered approach to lawyering. Citing philosophical works, Kruse highlights the value of nonintervention and increased client autonomy. She suggests that there are situations in which a lawyer has a professional responsibility to intervene. Kruse, however, points out that the tension between a lawyer's legal duties and a client's autonomy create a backdrop against which client-centered representation can be more fully understood.

{60} ADR—GENERAL
{73} SUBJ MATTER: GENERAL
{151} ROLE OF LAWYERS
{155} TEACHING

David Allen Larson, *Technology Mediated Dispute Resolution (TMDR): A New Paradigm for ADR*, 21 OHIO ST. J. ON DISP. RESOL. 629 (2006).
Larson looks beyond the common question of how technology can be applied to dispute resolution today, exploring how the next generation will use technology to solve disputes. Examining how children are learning to communicate differently than in the past through the use of computers and mobile phones, the author discusses the potential for intimacy, mindful mediation, and other aspects of current ADR practice in the future of technology-mediated dispute resolution.
{21} MEDIATION—GENERAL
{73} SUBJ MATTER: GENERAL
{78} SUBJ MATTER: COMPUTER—INTERNET
{151} ROLE OF LAWYERS

Linda M. Lasley, Keith Maurer & H. Wesley Sunu, *Recent Developments in Alternative Dispute Resolution*, 41 TORT TRIAL & INS. PRAC. L.J., Winter, 123 (2006).
Summarizes recent developments in arbitration between September 1, 2004 and August 31, 2005. Topics include separability doctrine, effect of the Federal Arbitration Act on state law, and adoption of the Revised Uniform Arbitration Act of 2000.
{44} ARBITRATION—GENERAL
{110} SUBJ MATTER: TORTS—OTHER

Audrey J. Lee, *Negotiating Part-Time Work: An Examination of How Attorneys Negotiate Part-Time Arrangements at Elite Law Firms*, 6 PEPP. DISP. RESOL. L.J. 405 (2006).
Audrey J. Lee reveals her study that runs contrary to recent research on gender and negotiation. The study examines specific efforts by women attorneys to negotiate part-time work in elite law firms. The results suggest that women attorneys are more able negotiators than previously thought. Using other discovered themes and trends, the article also offers prescriptive advice for attorneys and law firms when approaching the issue of part-time arrangements.
{1} NEGOTIATION—GENERAL
{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)
{134} DISPUTE PREVENTION

Sarah Leonard & Kanaga Dharmananda, *Peace Talks Before War: The Enforcement of Clauses for Dispute Resolution Before Arbitration*, 23 J. INT'L ARB. 301 (2006).
Discussion of the use of mediation or negotiation prior to adjucicatory actions in international conflicts. In Part III, the national laws of Australia, England, and Hong Kong are found to show support for this use of mediation or negotiation. When drafting an ADR clause in a contract, the author suggests making sure a timeframe is set and that the terms of the process are clearly defined.
{21} MEDIATION—GENERAL
{92} SUBJ MATTER: INT'L

Michael H. LeRoy, *Reinventing the Enterprise Wheel: Court Review of Punitive Awards in Labor and Employment Arbitrations*, 11 HARV. NEGOT. L. REV. 199 (2006).
Under the labor and employment contexts, the authors of this study examine the past and future of the arbitrator's most rare and severe sanction: punitive awards. They note distinctions between punitive awards under labor and employment arbitration. Because a growing number of employees, unions, and corporations can now choose to litigate or arbitrate their disputes, this study offers practical information in order to choose a proper forum.
{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{93} SUBJ MATTER: LABOR—GENERAL
{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

Robert Lloyd, *The "Circle of Assent" Doctrine: An Important Innovation in Contract Law*, 7 TRANSACTIONS 237 (2006).
The author advocates rules regarding the ability of a company to bind a consumer to a form contract containing unfair, but not necessarily unconscionable, provisions. Common law would bind a consumer to the terms he signed including, among other things, provisions related to unnecessary and expensive arbitration. The author's rule would bind the consumer to the terms agreed upon and those which were not unreasonable.
{44} ARBITRATION—GENERAL
{79} SUBJ MATTER: CONSUMER
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Melissa Lor, *Effectiveness of Citizens Advisory Boards in Addressing Fairness in Environmental Public Disputes*, 6 PEPP. DISP. RESOL. L.J. 177 (2006).
This article explores the problems inherent in environmental disputes regarding the inability of the public to have sufficient input in the dispute

resolution process. The author advocates the use of citizen advisory boards, composed of citizens who are affected by the dispute, as a means to "give the public a voice" that has been increasingly lacking from interest groups.
{21} MEDIATION—GENERAL
{84} SUBJ MATTER: ENVIRONMENT
{134} DISPUTE PREVENTION
{147} POWER IMBALANCE

Marcy L. McCullough, Comment, *Prescribing Arbitration to Cure the Common Crisis: Developing Legislation to Facilitate Arbitration as an Alternative to Litigating Medical Malpractice Disputes in Pennsylvania*, 110 PENN. ST. L. REV. 809 (2006).
In this comment, McCullough discusses the benefits of arbitration in medical malpractice disputes and discusses proposed amendments to the Medical Care Availability and Reduction of Error Act (MCARE). The author specifically focuses on those proposed amendments concerning court-annexed arbitration and agreements to arbitrate, and calls for the Pennsylvania General Assembly to enact legislation that facilitates the arbitration of medical malpractice disputes.
{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{98} SUBJ MATTER: MEDICAL MALPRACTICE
{144} LEGISLATION
{128} REQUIREMENTS: STATUTORY OR RULES

Nickolas J. McGrath, McCauley v. Halliburton Energy Services, Inc.: *Treatment of a Motion to Stay Proceedings Pending an Arbitrability Appeal*, 83 DENVER U.L. REV. 793 (2006).
In this article, the author describes the Federal Arbitration Act test for determining whether to stay court proceedings pending an arbitrability appeal and the current circuit split on whether to grant such a stay. He then addresses the issue in the context of the recent Tenth Circuit case *McCauley v. Halliburton Energy Services, Inc.*, and presents two arguments in support of its holding.
{44} ARBITRATION—GENERAL
{81} SUBJ MATTER: CORPORATE
{128} REQUIREMENTS: STATUTORY OR RULES
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Amber McKinney, Note, *The ACLU and the Propriety of Dispute Resolution in Civil Rights Controversies*, 6 PEPP. DISP. RESOL. L.J. 109 (2006).

In this note, McKinney explains that the American Civil Liberties Union has been faced with the possibility that some civil rights disputes may be forced to resolution through informal processes such as alternative dispute resolution. She claims that these processes lack the precedential value required to make dramatic advancements in the field of civil rights law.
{21} MEDIATION—GENERAL
{76} SUBJ MATTER: CIVIL RIGHTS

Linda G. Mills, Note, *The Justice of Recovery: How the State Can Heal the Violence of Crime*, 57 HASTINGS L.J. 457 (2006).
The author argues that extending the criminal justice system to include restorative justice programs for victims of crime and offenders will prevent future crime. According to the author, current criminal justice structures do not adequately help victims heal from the psychological trauma of crime. The author calls for reforms that allow victims to seek restorative justice programs consistent with the current goals of the criminal justice system.
{60} ADR—GENERAL
{82} SUBJ MATTER: CRIMINAL
{133} COURT REFORMS

Henry F. Minnerop & Kimberly A. Johns, *Attorney's Fees in Arbitration*, 61 BUS. LAW. 589 (2006).
Discusses the American Rule for the allocation of attorney's fees in arbitration and the problem of unlawful awards of attorney's fees. Includes recommendations for avoiding unintended fee awards.
{44} ARBITRATION—GENERAL
{73} SUBJ MATTER: GENERAL

Brent C. Moberg, *Navigating the Public Relations Minefield: Mutual Protection Through Mandatory Arbitration Clauses in College Coaching Contracts*, 16 J. LEGAL ASPECTS OF SPORT, Winter, 85 (2006).
In this article, Moberg examines the use of ADR in the context of intercollegiate athletics. Specifically, he advocates the use of mandatory arbitration agreements in the contracts of coaches to resolve disputes that may arise between the coaches and institutions.
{44} ARBITRATION—GENERAL
{107} SUBJ MATTER: SPORTS & ENTERTAINMENT
{126} REQUIREMENTS: CONTRACTUAL CLAUSES
{136} ECONOMIC ADVANTAGES OF ADR

Michael C. Moran, Note, *Just Between You and Me: The Blanket Mediation Privilege in Massachusetts Unnecessarily Undermines Access to Evidence*, 39 SUFFOLK U. L. REV. 539 (2006).
In this note, Moran discusses the Massachusetts statute which confers blanket confidentiality protection on the mediation process, including an explicit prohibition on disclosure in judicial proceedings, without listing any exceptions. He explains that the only practical effect of the statute's protection of mediation confidentiality is the exclusion of evidence.
{21} MEDIATION—GENERAL
{104} SUBJ MATTER: REGULATORY
{128} REQUIREMENTS: STATUTORY OR RULES
{132} CONFIDENTIALITY

W. Alexander Moseley, *What Do You Mean I Can't Get That? Discovery in Arbitration Proceedings*, 26 CONSTR. LAW., Fall, 18 (2006).
The Uniform Arbitration Act, or the Revised Uniform Arbitration Act, is not detailed in terms of discovery. Absent contractual language specifying the scope of discovery, most courts allow an arbitrator to allow discovery at his or her discretion. In these instances, arbitrators tend to only allow minimal discovery techniques. The author concludes by recommending various approaches to establish discovery parameters.
{44} ARBITRATION—GENERAL
{80} SUBJ MATTER: CONSTRUCTION
{128} REQUIREMENTS: STATUTORY OR RULES

Roslyn Myers, *Crime Victims as Subjects of Documentaries: Exploitation or Advocacy?*, 16 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 733 (2006).
This article argues that documentary films provide a better outlet for victim healing than the criminal justice system because a documentary film offers the same benefits as victim-offender mediation (VOM). Documentary films offer a chance for crime victims to publicly tell their stories and heal themselves from the trauma.
{21} MEDIATION—GENERAL
{82} SUBJ MATTER: CRIMINAL
{124} COMPARISONS: CROSS-CULTURAL

Matthew Nickson, Comment, *Closing U.S. Courts to Foreign Seamen: The Judicial Excision of the FAA Seamen's Arbitration Exemption from the New York Convention Act*, 41 TEX. INT'L L.J. 103 (2006).
The author is concerned about two recent circuit court decisions which compelled the arbitration of Jones Act tort claims of foreign seamen who had mandatory arbitration clauses in their employment contracts. Among other

things, the author argues that the enforcement of arbitration provisions in these cases would "circumvent" the intent of policies like the Jones Act and the FELA, most notably through the ease at which employees can obtain compensation.
{44} ARBITRATION—GENERAL
{92} SUBJ MATTER: INT'L
{97} SUBJ MATTER: MARITIME

Rebecca L. Olson, Casenote, Aguillard v. Auction Management Corp.: *Louisiana Adopts a Presumption Favoring the Enforcement of Arbitration Agreements*, 80 TUL. L. REV. 1479 (2006).
This casenote outlines the recent decision of the Louisiana Supreme Court in *Aguillard v. Auction Management Corp.* in which the court adopted a presumption favoring the enforceability of arbitration agreements. The author details the history of the courts' distate for arbitration clauses and analyzes the effect of the decision on a party's ability to challenge consent to a contract term.
{44} ARBITRATION—GENERAL
{75} SUBJ MATTER: COMMERCIAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Dan Orr & Chris Guthrie, *Anchoring, Information, Expertise, and Negotiation: New Insights from Meta-Analysis*, 21 OHIO ST. J. ON DISP. RESOL. 597 (2006).
Anchoring in negotiation is the use of an initial figure to influence another party's perceived value of an item. This article examines how much of an impact anchoring has on negotiation, and looks specifically at what effect information and experience have on this phenomenon. Suggestions based on these analyses are then made for negotiators in both offensive and defensive negotiating roles.
{1} NEGOTIATION—GENERAL
{73} SUBJ MATTER: GENERAL
{123} SETTLEMENT: PRESSURES TO SETTLE

Louise Otis & Eric H. Reiter, *Mediation by Judges: A New Phenomenon in the Transformation of Justice*, 6 PEPP. DISP. RESOL. L.J. 351 (2006).
The authors evaluate how institutionalized judicial mediation challenges and complements traditional conceptions of adjudicative justice. The article focuses upon Quebec's judicial mediation program, which incorporates adjudication and mediation in every area of law. The article concludes that with enough concern for proper development and maturation, judicial

mediation can offer an additional and healthy method of resolving legal conflicts.
{21} MEDIATION—GENERAL
{73} SUBJ MATTER: GENERAL
{133} COURT REFORMS

Jeffrey A. Parness, *Improving Judicial Settlement Conferences*, 39 U.C. DAVIS L. REV. 1891 (2006).
In this article, the author argues for adding formality and written guidelines to judicial settlement conferences without discouraging or restricting their practice. The article begins by outlining the common criticisms of settlement conferences, then proposes reforms to improve their effectiveness.
{21} MEDIATION—GENERAL
{102} SUBJ MATTER: PUBLIC POLICY
{121} SETTLEMENT: AUTHORITY
{133} COURT REFORMS

Gerardo R. Pico, *A Beginner's Guide to Arbitration in Puerto Rico*, 5 APPALACHIAN J.L. 263 (2006).
In this article, the author discusses the use of arbitration within the legal system in Puerto Rico. She examines state laws and cases pertinent to arbitration and discusses examples of the use of arbitration by government agencies within Puerto Rico.
{44} ARBITRATION—GENERAL
{102} SUBJ MATTER: PUBLIC POLICY
{124} COMPARISONS: CROSS-CULTURAL

Ascanio Piomelli, Note, *Article: The Democratic Roots of Collaborative Lawyering*, 12 CLINICAL L. REV. 541 (2006).
The author examines the political and social movements that gave birth to what is known as collaborative lawyering. Concerned that collaborative lawyering is losing touch with the ideals and purposes from which it was conceived, the author calls for a resurrection of the democratic spirit in collaborative lawyering.
{53} COLLABORATIVE LAW—GENERAL
{73} SUBJ MATTER: GENERAL
{125} COMPARISONS: HISTORICAL

Joshua Piper, Comment, *Australia's "New Arrangements in Indigenous Affairs": A New Approach or a New Paternalism?*, 15 PAC. RIM L. & POL'Y 265 (2006).

In assessing Australia's replacement of a representative body for indigenous affairs with an administrative initiative that uses negotiated agreements, the author supports the process of negotiation as a method of shared responsibility between government and tribal leaders that better meets indigenous needs of sovereignty, self-determination, and justice. Despite the promises of contractualism—ordering relations by negotiation—the author explains local reluctance and offers policy suggestions.
{1} NEGOTIATION—GENERAL
{87} SUBJ MATTER: GOV'T

Orna Rabinovich-Einy, *Technology's Impact: The Quest for a New Paradigm for Accountability in Mediation*, 11 HARV. NEGOT. L. REV. 253 (2006).
The author of this article addresses SquareTrade's contributions to the dilemma of accountability in mediation. The article advocates a paradigm shift to better address the conflict between confidentiality, flexibility, and accountability, using SquareTrade as a case study.
{1} NEGOTIATION—GENERAL
{78} SUBJ MATTER: COMPUTER—INTERNET
{146} ORGANIZATION POLICIES & RULES

Susan Randall, *Mandatory Arbitration in Insurance Disputes: Inverse Preemption of the Federal Arbitration Act*, 55 DEF. L.J. 265 (2006).
The author discusses various concerns that mandatory binding arbitration clauses raise in the insurance context. She also discusses the McCarran-Ferguson Act, which allows inverse preemption of the Federal Arbitration Act, letting state insurance statutes, regulations, and case law to limit mandatory arbitration clauses, preempting the FAA and allowing states to restrict the use of binding arbitration clauses.
{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{91} SUBJ MATTER: INSURANCE
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Joshua Ratner & Christian Turner, *Second Circuit Survey: Origin, Scope, and Irrevocability of the Manifest Disregard of the Law Doctrine: Second Circuit Views*, 24 QUINNIPIAC L. REV. 795 (2006).
In this article, Rattner and Turner explore the Second Circuit's evolving guidelines for vacating arbitration awards. The article states that a 1998 decision that stated that arbitration awards should be disregarded only if the arbitrator shows "manifest disregard of the evidence" created a standard that district courts quickly adopted. Yet, the Second Circuit has since abandoned

this test and the Circuit now looks to the evidentiary record to determine if the arbitration award disregards the law.
{44} ARBITRATION—GENERAL
{73} SUBJ MATTER: GENERAL
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Judith Resnik, *Uncovering, Disclosing, and Discovering How the Public Dimensions of Court-Based Processes Are at Risk*, 81 CHI.-KENT L. REV. 521 (2006).
Resnik examines the history of public performance and adjudication and considers how the federal courts in the twentieth century became a good source of information about legal, political, and social conflict. Resnik argues that the knowledge of such conflicts is limited due to outsourcing the court's authority to outside agencies. She suggests regulations that promote the public dimensions of courts and their alternatives.
{60} ADR—GENERAL
{102} SUBJ MATTER: PUBLIC POLICY
{132} CONFIDENTIALITY
{128} REQUIREMENTS: STATUTORY OR RULES

Mitchell H. Rubinstein, *Altering Judicial Review of Labor Arbitration Awards*, 2006 MICH. ST. L. REV. 236.
The author discusses situations where parties to a collective barganing agreement attempt to stipulate the standard of judicial review for arbitration awards purusant to that agreement. He argues that neither advocates nor critics of these clauses are completely correct and that courts will have to balance the parties desires with their desire to maintain supervision over the arbitration process
{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{93} SUBJ MATTER: LABOR—GENERAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Victor R. Salgado, Comment, *The Case Against Adopting BIT Law in the FTAA Framework*, 2006 WIS. L. REV. 1025.
This comment looks at the rising number of arbitration proceedings under BIT law and asserts that this is a negative development because many claims fall within a state's sovereign right to regulate. Salgado highlights the Argentine experience in an effort to have policy-makers in the Americas reconsider commitment to a hemisphere-wide investment treaty with BIT text. FTAA countries should examine IISD Model Agreements as an alternative to FTAA Investment Draft.
{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL

Frank E.A. Sander & Lukasz Rozdeiczer, *Matching Cases and Dispute Resolution Procedures: Detailed Analysis Leading to a Mediation Centered Approach*, 11 HARV. NEGOT. L. REV. 1 (2006).
The authors argue that one of the most difficult aspects of alternative dispute resolution is matching the correct procedure with each case. They talk about issues that parties and their counsel should discuss before choosing a method, the frequency with which each process is used and the satisfaction level with that process, and the judgment of dispute resolution professionals
{1} NEGOTIATION—GENERAL
{21} MEDIATION—GENERAL
{38} NON-BINDING RECOMMENDATION PROC—GENERAL
{73} SUBJ MATTER: GENERAL

Andrea Kupfer Schneider, *Not Quite a World Without Trials: Why International Dispute Resolution is Increasingly Judicialized*, 2006 J. DISP. RESOL. 119.
In this article Schneider explores the increasing popularity of judicial settlement for international disputes. She argues that while more domestic disputes are settled through ADR, international disputes are settled increasingly by courts. The article discusses the possible factors leading up to this trend.
{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL
{136} ECONOMIC ADVANTAGES OF ADR

Kirk W. Schuler, Note, *ADR's Biggest Compromise*, 54 DRAKE L. REV. 751 (2006).
Schuler offers a critique of the unforeseen costs of the tremendous growth of ADR, noting that the question whether ADR is good for the legal system as a whole has gone largely unaddressed. He asserts that the increased use of private dispute resolution means and concurrent decline in the use of civil trials and juries have created a divide between Americans and the democratic institutions that provide constitutional freedoms.
{60} ADR—GENERAL
{73} SUBJ MATTER: GENERAL
{151} ROLE OF LAWYERS

L. Wayne Scott, *The Law of Mediation in Texas*, 37 ST. MARY'S L.J. 325 (2006).
In this article, Scott explains the development of mediation laws in Texas, beginning with the passage of the Texas Alternative Dispute Resolution Act. Scott explores a number of cases and policies that deal with the Texas ADR Act.
{21} MEDIATION—GENERAL
{73} SUBJ MATTER: GENERAL
{133} COURT REFORMS

Paul M. Secunda, *"Arasoi O Mizu Ni Nagasu" or "Let the Dispute Flow to Water": Pedagogical Methods for Teaching Arbitration Law in American and Japanese Law Schools*, 21 OHIO ST. J. ON DISP. RESOL. 687 (2006).
Secunda argues that it is important to teach arbitration in American and Japanese law schools as he goes through the history of arbitration in both countries. The article then discusses the effective pedagogical techniques that will encourage law schools in both countries to contemplate other methods to teaching arbitration, a topic he argues is neglected.
{44} ARBITRATION—GENERAL
{83} SUBJ MATTER: EDUCATION
{124} COMPARISONS: CROSS-CULTURAL
{155} TEACHING

Tracy J. Simmons, Note, *Mandatory Mediation: A Better Way to Address Status Offenses*, 21 OHIO ST. J. ON DISP. RESOL. 1043 (2006).
Simmons argues that the juvenile court system has been ineffective in the resolution of status offenses. She then asserts that using mediation to resolve status offenses would obtain a better and more complete result.
{21} MEDIATION—GENERAL
{82} SUBJ MATTER: CRIMINAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Rochelle Gnagey Skolnick, Note, *Control, Collaboration or Coverage: The NLRA and the St. Paul Orchestra Dilemma*, 20 WASH. U. J.L. & POL'Y 403 (2006).
This note argues that the members of the St. Paul Chamber Orchestra may lose their protection to collectively negotiate agreements because they may be considered outside the definitions of employees under the National Labor Relations Act. Therefore, the author recommends alternative solutions for musicians who wish to have a greater role with the institutional decisionmaking process and wish to not lose their status as employees.
{1} NEGOTIATION—GENERAL

{95} SUBJ MATTER: LABOR—MANAGEMENT (UNION)
{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

{146} ORGANIZATION POLICIES & RULES

Matthew A. Smith, Marina Cousté, Temogen Hield, Richard Jarvis, Mrinalini Kochupillai, Barry Leon, Jacobus C. Rasser, Masamitsu Sakamoto, Andy Shaughnessy & Jonathan Branch, *Arbitration of Patent Infringement and Validity Issues Worldwide*, 19 HARV. J.L. & TECH. 299 (2006).
The authors assert that binding arbitration has not been successful in significantly decreasing the patent caseload of the public courts. Although interest in patent arbitration can be seen in some countries, significant practical and legal obstacles to the use of arbitration, particularly at the international level, still confront parties interested in this method of dispute resolution.
{44} ARBITRATION—GENERAL
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Aaron J. Sobaski, *Arbitrators Hearing Grievances Under the National Football League's Collective Bargaining Agreement Should Require Grievances to be Timely Filed*, 16 J. LEGAL ASPECTS OF SPORT, Winter, 1 (2006).
Sobaski analyzes the arbitration rules of the National Football League's Collective Bargaining Agreement (CBA), as they relate to the resolution of disputes between players and teams. He explains the rationale and methods underlying the time limits of the arbitration process found in the CBA and calls for their strict enforcement.
{44} ARBITRATION—GENERAL
{107} SUBJ MATTER: SPORTS & ENTERTAINMENT
{146} ORGANIZATION POLICIES & RULES
{145} OMBUDSPERSON

Merianne Stansbury, *Negotiating Winters: A Comparative Case Study of the Montana Reserved Water Rights Compact Commission*, 27 PUB. LAND & RESOURCES L. REV. 131 (2006).
In order to deal with the contentious issue of water allocation with Indian tribes, Montana created the Reserved Water Rights Compact Commission to negotiate settlements as an alternative to adjudication. This article concludes that negotiation is more effective and efficient than adjudication in dealing with tribal water rights claims and provides two case studies of resource negotiations between the government and the Indian tribes.

{1} NEGOTIATION—GENERAL
{84} SUBJ MATTER: ENVIRONMENT
{87} SUBJ MATTER: GOV'T
{144} LEGISLATION

Tom Stilwell, *Correcting Errors: Imperfect Awards in Texas Arbitration*, 58 BAYLOR L. REV. 467 (2006).
Stilwell discusses arbitration's favored role in Texas under the Texas Constitution, the Texas common law, and the Texas General Arbitration Act. Final, binding arbitration is favored for public policy reasons, as it tends to provide a quick and effective method of conflict resolution. To promote these policy aims, there is a very strong presumption in favor of upholding an arbitration decision.
{44} ARBITRATION—GENERAL
{102} SUBJ MATTER: PUBLIC POLICY
{128} REQUIREMENTS: STATUTORY OR RULES

Laura A. Stoll, Casenote, *"We Decline to Address": Resolving the Unanswered Questions left to Encourage Mediation and Prevent the Improper Shielding of Evidence*, 53 UCLA L. REV. 1549 (2006).
The author discusses the California decision in *Rojas v. Superior Court*, which granted a privilege for materials prepared for a mediation, while declining to define the outer limits of these materials. She argues that by failing to define the limits of those materials, the Court creates unneeded uncertainty. She also includes proposals for defining mediation and preparation for mediation.
{21} MEDIATION—GENERAL
{73} SUBJ MATTER: GENERAL
{132} CONFIDENTIALITY

Steven Strack, Note, *Pandora's Box or Golden Opportunity? Using the Settlement of Indian Reserved Water Right Claims to Affirm State Sovereignty Over Idaho Water and Promote Intergovernmental Cooperation*, 42 IDAHO L. J. 633 (2006).
The author describes why mediation resulted in the most favorable settlement for both the Nez Perce tribe and the government in the Snake River Basin Adjudication.
{21} MEDIATION—GENERAL
{84} SUBJ MATTER: ENVIRONMENT
{127} REQUIREMENTS: MANDATE TO USE

Elizabeth K. Strickland, Comment, *Putting "Counselor" Back in the Lawyer's Job Description: Why More States Should Adopt Collaberative Law Students*, 84 N.C. L. REV. 979 (2006).
This comment argues that more states should adopt collaborative law practices as a means of remedying the destructive nature of divorce proceedings as well as other confrontational family law areas.
{53} COLLABORATIVE LAW—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{151} ROLE OF LAWYERS

S.I. Strong, *Enforcement of Arbital Awards Against Foreign States or State Agencies*, 26 NW. J. INT'L L. & BUS. 335 (2006).
Arbital enforcement actions over foreign states and agencies is at a crossroads. The D.C. Circuit Court's decision to do away with the minimum contacts that a foreign state or agency must have with the U.S. when enforcing arbital awards under sections 1605(a)(1) and 1605(a)(6) of the U.S. Foreign Sovereign Immunities Act is suspect. It is uncertain whether the D.C. Circuit's decision should be upheld, or whether other circuits will follow suit.
{44} ARBITRATION—GENERAL
{92} SUBJ MATTER: INT'L
{121} SETTLEMENT: AUTHORITY
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Sheea Sybblis, *Mediation in the Health Care System: Creative Problem Solving*, 6 PEPP. DISP. RESOL. L. J. 493 (2006).
In this article, Sybblis explores the use of mediation as an alternative to litigation in the health care context. The author contends that mediation is a viable alternative to litigation because of its flexible nature, as mediation allows for interpersonal communication and can be a cost-saving endeavor for both parties.
{21} MEDIATION—GENERAL
{89} SUBJ MATTER: HOSPITALS
{88} SUBJ MATTER: GOV'T CONTRACTS
{136} ECONOMIC ADVANTAGES OF ADR

Anahit Tagvoryan, *A Secret in One District is No Secret in Another: The Cases of Merrill Lynch and Preliminary Injunctions Under the FAA*, 6 PEPP. DISP. RESOL. L.J. 147 (2006).
Courts traditionally issue preliminary injunctions in intellectual property disputes to prevent unfair deviations from the status quo while a dispute is being litigated, yet there are questions regarding the ability of parties to seek

court-ordered injunctions while the same dispute is pending in arbitration. In this article the author explores the consequences of not allowing temporary remedies like injunctions that preserve the status quo while a dispute is being arbitrated.
{44} ARBITRATION—GENERAL
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY
{126} REQUIREMENTS: CONTRACTUAL CLAUSES
{133} COURT REFORMS

Gabriel Taran, Comment, *Towards a Sensible Rule Governing Stays Pending Appeals of Denials of Arbitration*, 73 U. CHI. L. REV. 399 (2006).
In this comment Taran proposes a four-factor test that district judges would apply to determine whether an issuance or a denial of a stay is appropriate. He examines the statutory scheme behind stays pending arbitrability appeals and describes the circuit split that has developed as a result. Taran reviews different approaches to those stays and introduces his proposed approach, exploring its advantages and disadvantages.
{44} ARBITRATION—GENERAL
{73} SUBJ MATTER: GENERAL
{133} COURT REFORMS

Charles P. Trumbull, Note, *Islamic Arbitration: A New Path for Interpreting Islamic Legal Contracts*, 59 VAND. L. REV. 609 (2006).
For many Muslims living in secular democracies, there is a tension between religious custom and secular law. Religious tenets often included in secular contracts pose First Amendment concerns if courts were to interpret them. As a solution to this tension, the author advocates that parties by agreement submit the religious term for interpretation to arbitration. After arbitration interprets the terms the matter is decided in the secular court system.
{44} ARBITRATION—GENERAL
{102} SUBJ MATTER: PUBLIC POLICY
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Thomas Tso, Casenote, *Mediation's Boundaries:* In re Licensure of Penny v. State ex rel. Wyoming, 11 HARV. NEGOT. L. REV. 453 (2006).
This casenote explores the effects of licensing regulations on practitioners with mixed roles. Here, the defendant responded to allegations of unlicensed practice of "clinical social work" by claiming to have limited his work to mediation. By ruling that his practice was regulated under medical licensing requirements, this case presents dangers of eliminating unlicensed mediators and thereby assigning the once informal, market-driven practice of mediation to licensed legal and medical professionals.

{21} MEDIATION—GENERAL
{98} SUBJ MATTER: MEDICAL MALPRACTICE
{99} SUBJ MATTER: OTHER PROF MALPRACTICE

A. Marco Turk, *Cyprus Reunification is Long Overdue: The Time is Right for Track III Diplomacy as the Best Approach for Successful Negotiation of this Ethnic Conflict*, 28 LOY. L.A. INT'L & COMP. L. REV. 205 (2006).
The ethnically divided island of Cyprus is partitioned between Greek and Turkish populations. Past negotiations have failed, and the author proposes an alternate method, Track III Diplomacy. This type of diplomacy involves grass-roots organizations which attempt mediation, reconciliation, and problem solving. The author brought members of both populations together for dialogue and achieved some positive results.
{1} NEGOTIATION—GENERAL
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL

Jenia Iontcheva Turner, *Judicial Participation in Plea Negotiations: A Comparative View*, 54 AM. J. COMP. L. 199 (2006).
A judge's early input into plea negotiations can render the final disposition more accurate and procedurally just. Though the examination of interviews with practitioners and a review of the case law, the Article outlines a model for greater judicial involvement in plea negotiations. The systems for Connecticut, Florida, and Germany are examined to give a cross-cultural overview of the need for greater judicial involvement.
{1} NEGOTIATION—GENERAL
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL
{123} SETTLEMENT: PRESSURES TO SETTLE

Carol Van Sambeek, *The Four Corners Approach to Judging the Enforceability of Arbitration Agreements, Which Waive Statutory Rights to Litigate Employment Discrimination Claims*, 5 APPALACHIAN J.L. 247 (2006).
This article focuses on the Supreme Court's approach to arbitration agreements. The author posits that arbitration agreements should be upheld, and we should expect the Supreme Court to uphold them when they are entered into willingly. This article also focuses on employee perceptions of arbitration agreements and points out the high level of acceptance of arbitration agreements by employees. The agreements also help to limit the number of employment discrimination cases.
{44} ARBITRATION—GENERAL

{94} SUBJ MATTER: LABOR—DISCRIMINATION

Amber A. Ward, Comment, *Circumventing the Supremacy Clause? Understanding the Constitutional Implications of the United States' Treatment of Treaty Obligations Through an Analysis of the New York Convention.*, 7 SAN DIEGO INT'L L.J. 491 (2006).
In this comment, Ward discusses the importance of arbitration agreements in the role of international commercial relations. Generally, when commercial agreements contract to use arbitration to resolve disputes, the parties agree on the location and the law to be applied in the arbitration. The author argues that rather than preferring only application of American law in these agreements, American corporations would be better served if they gave deference to Article V of the New York Convention, thus respecting the legal systems of other countries and broad international agreements.
{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{92} SUBJ MATTER: INT'L
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Laura E. Weidner, Recent Development, *Model Standards of Conduct for Mediators*, 21 OHIO ST. J. ON DISP. RESOL. 547 (2006).
The author discusses the various concerns academics and professionals have had regarding the Model Rules for Mediators. She proposes that instead of advocating sweeping changes to reform potential problems with the rules, we should simply continue to revise and make small changes as the legal area develops.
{21} MEDIATION—GENERAL
{104} SUBJ MATTER: REGULATORY
{102} SUBJ MATTER: PUBLIC POLICY

Gu Weixia & Joshua A. Lindenbaum, *The NYPE 93 Arbitration Clause: Where Ends the Open-End?*, 37 J. MAR. L. & COM. 245 (2006).
This article examines the arbitration clause under the standard Time Charter NYPE 93 Form, and its failure to require a definitive choice of arbitral seat. The author argues that this lack of requiring choice brings about practical difficulties in identifying both jurisdiction and applicable law. Further, the author contends that open-ended arbitration clauses that contain no provisions choosing the arbitral seat should be voided, and suggests methods to improve the NYPE 93 Form.
{44} ARBITRATION—GENERAL
{97} SUBJ MATTER: MARITIME
{126} REQUIREMENTS: CONTRACTUAL CLAUSES
{128} REQUIREMENTS: STATUTORY OR RULES

Maureen A. Weston, *Universes Colliding: The Constitutional Implications of Arbitral Class Actions*, 47 WM. & MARY L. REV. 1711 (2006).
Weston asserts that Congress must use the FAA to address increasingly complex questions regarding arbitral class actions, including potential evisceration of class actions through contractual bans and fair trial due process requirements. The FAA should specify appropriate procedures to clarify the role of the court and arbitrator. Judicial oversight remains essential to protect absent class members and for the principle that arbitration merely changes the forum, not the substantive rights.
{44} ARBITRATION—GENERAL
{73} SUBJ MATTER: GENERAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES
{127} REQUIREMENTS: MANDATE TO USE

Matteo Winkler, *Arbitration Without Privity and Russian Oil: The Yukos Case Before the Houston Court*, 27 U. PA. J. INT'L ECON. L. 115 (2006).
Yukos Oil Company, a multinational enterprise based in Russia, forced arbitration with the Russian Federation by using international treaties and national laws in order to bring the largest bankruptcy case ever filed in the United States under the jurisdiction of a district court in Texas. This article describes "arbitration without privity" which is the right of the investor to initiate arbitration against the host state without a previous arbitration agreement.
{44} ARBITRATION—GENERAL
{92} SUBJ MATTER: INT'L
{74.5} SUBJ MATTER: BANKRUPTCY
{128} REQUIREMENTS: STATUTORY OR RULES

Robert K. Wise, *Mediation in Texas: Can the Judge Really Make Me Do That?*, 47 S. TEX. L. REV. 849 (2006).
Wise examines what a mediation referral order can properly require under Texas law. The author contends that a mediation referral order in Texas can not require the litigants to settle nor can it require good faith participation in mediation. The article also contends that the mediation referral order cannot require a party's insurance representative to attend the mediation.
{21} MEDIATION—GENERAL
{73} SUBJ MATTER: GENERAL
{128} REQUIREMENTS: STATUTORY OR RULES

Benjamin J.C. Wolf, Note, *On-Line But Out of Touch: Analyzing International Dispute Resolution Through the Lens of the Internet*, 14 CARDOZO J. INT'L & COMP. L. 281 (2006).

In this note Benjamin J.C. Wolf analyzes the role and future of arbitration in international dispute resolution. This includes a closer look at the challenges presented by the internet upon international commercial activity. Wolf concludes that arbitration is the most effective and reliable mechanism for international disputes, but that it must improve by responding to changes in international trade.
{60} ADR—GENERAL
{92} SUBJ MATTER: INT'L

Caryn Litt Wolfe, Note, *Faith-Based Arbitration: Friend or Foe? An Evaluation of Religious Arbitration Systems and Their Interaction With Secular Courts*, 75 FORDHAM L. REV. 427 (2006).
This note describes faith-based arbitration procedures in family law and compares them to regular arbitration. Wolfe concludes that more oversight of faith-based programs is needed, but the United States is correct in continuing their use.
{44} ARBITRATION—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{124} COMPARISONS: CROSS-CULTURAL

William Woodward, Note, *Finding the Contract in Contracts for Law, Forum, and Arbitration*, 2 HASTINGS BUS. L.J., Winter, 1 (2006).
The author argues that a new doctrine must be developed to interpret choice-of-law provisions in contracts. The author also argues that the current interpretation of mandatory arbitration clauses impacts the interpretation of choice-of-law clauses.
{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{75} SUBJ MATTER: COMMERCIAL
{79} SUBJ MATTER: CONSUMER
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Zhao Xiuwen & Lisa A. Kloppenberg, *Reforming Chinese Arbitration Law and Practices in the Global Economy*, 31 DAYTON L. REV. 421 (2006).
The recent growth of the legal system in China, combined with the increased use of arbitration throughout the world, has resulted in major expansion and changes in Chinese arbitration laws. This article makes suggestions regarding how China could further modernize its arbitration laws to more closely align them with international norms. It also examines some recent developments in Chinese arbitration law and discusses conflicts surrounding standards of judicial review.
{44} ARBITRATION—GENERAL
{92} SUBJ MATTER: INT'L

{75} SUBJ MATTER: COMMERCIAL
{124} COMPARISONS: CROSS-CULTURAL

Stephen Yoost, Note, *The National Hockey League and Salary Arbitration: Time for a Line Change*, 21 OHIO ST. J. ON DISP. RESOL. 485 (2006).
In recent years, under the old collective barganing agreement the NHL lost money largely due to the NHL's rules concerning arbitration. Changes to the arbitration system will likely be a determining factor in the future financial success of the NHL.
{44} ARBITRATION—GENERAL
{107} SUBJ MATTER: SPORTS & ENTERTAINMENT
{147} POWER IMBALANCE

Paula M. Young, *Rejoice! Rejoice! Rejoice, Give Thanks, and Sing: ABA, ACR, and AAA Adopt Revised Model Standards of Conduct for Mediators*, 5 APPALACHIAN J.L. 195 (2006).
In this article Young celebrates the adoption of new guidelines for mediators by three major alternative dispute resolution organizations. She discusses how these guidelines inform and codify ethical practices for mediators that have been informally advocated and practiced for years.
{21} MEDIATION—GENERAL
{138} ETHICS: GENERAL
{146} ORGANIZATION POLICIES & RULES
{151} ROLE OF LAWYERS

Paula Young, *Take It or Leave It. Lump It or Grieve It: Designing Mediator Complaint Systems that Protect Mediators, Unhappy Parties, Attorneys, Courts, the Process, and the Field*, 21 OHIO ST. J. ON DISP. RESOL. 721 (2006).
This article supports adding complaint procedures into court-connected mediation to allow for a measure of procedural justice for parties who encounter bad mediators. The complaint system would protect mediators from frivolous misconduct lawsuits and would re-establish faith in the judicial system and mediation processes.
{21} MEDIATION—GENERAL
{99} SUBJ MATTER: OTHER PROF MALPRACTICE
{133} COURT REFORMS
{149} QUALITY CONTROL

Saami Zain, *Suppression of Innovation or Collaborative Efficiencies?: An Antitrust Analysis of a Research and Development Collaboration that Led to the Shelving of a Promising Drug*, 5 J. MARSHALL REV. INTELL. PROP. L. 348 (2006).
This article discusses research and development collaborations and proceeds by providing and evaluating an actual example where suppression occurred. It focuses on drug firms' ten year dispute over rights to develop antibodies for a peanut allergy, which resulted in the abandonment of a drug because of fears related to the collaboration, namely that a new drug would be developed by the collaboration.
{53} COLLABORATIVE LAW—GENERAL
{74} SUBJ MATTER: ANTITRUST

Jian Zhou, *Judicial Intervention in International Arbitration: A Comparative Study of the Scope of the New York Convention in U.S. and Chinese Courts*, 15 PAC. RIM L. & POL'Y 403 (2006).
The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards is the enforcement mechanism of international arbitration agreements. However, because the scope of the New York Convention is not clearly defined the different interpretations of domestic courts determine the scope of interventions. This article presents a comparison of the practices of the United States and China in determining intervention that is appropriate and positive toward international business.
{44} ARBITRATION—GENERAL
{92} SUBJ MATTER: INT'L
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD
{124} COMPARISONS: CROSS-CULTURAL

Aaron E. Zurek, Note, *All The King's Horses and All The King's Men: The American Family After* Troxel, *the Parens Patriae Power of the State, a Mere Eggshell Against the Fundamental Right of Parents to Arbitrate Custody Disputes*, 27 HAMLINE J. PUB. L. & POL'Y 357 (2006).
The author demonstrates that the historical development of the parens patriae doctrine supports an exceptionally narrow application of state power against the fundamental right of parents to parent. The note calls for the adoption of a modified version of the Model Family Law Arbitration Act to include a clearly erroneous standard in place of the current de novo standard of review for arbitral awards of child custody.
{44} ARBITRATION—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{133} COURT REFORMS

The AFCCC Task Force on Parenting Coordination, *Guidelines for Parenting Coordination*, 44 FAM. CT. REV., January (No.1), 164 (2006).
The Task Force promulgated rules for a child-focused alternative dispute resolution process. This process allows mental health and legal professionals to help high conflict parents to implement a parenting plan by facilitating the resolution of their disputes in a timely manner. The entire article is a list of guidelines to help offer guidance to the mediators who aid in resolving these disputes.
{21} MEDIATION—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{134} DISPUTE PREVENTION
{128} REQUIREMENTS: STATUTORY OR RULES

Buck S. Beltzer & Stephen A. Wichern, Note, *Judicial Review Under the Railway Labor Act: Are Due Process Claims Permissible?*, 33 TRANSP. L.J., Fall/Spring, 197 (2006).
This note discusses the impact of the Tenth Circuit's decision in *Kinross* holding that federal courts may not review an arbitration decision under the Railway Labor Act on due process grounds. The note surveys the RLA's arbitration process and the case law ultimately leading to the Tenth Circuit's decision.
{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{87} SUBJ MATTER: GOV'T
{144} LEGISLATION
{133} COURT REFORMS

Kelly A. Fischer, *The Carmack Amendment and the American Rule: Is Arbitration a Necessary Prerequisite to an Award of Attorney's Fees?*, 33 TRANSP. L.J., Fall/Spring, 163 (2006).
Fischer discusses the exception to the American rule, under which each party must ordinarily pay its own attorney's fees, that applies to shippers and carriers of household goods. In *Campbell v. Allied Van Lines, Inc.*, the Ninth Circuit "determined that a shipper need not engage in arbitration in order to be properly awarded attorney's fees pursuant to statute." Fischer reconciles this case with the statute itself and other cases interpreting it.
{44} ARBITRATION—GENERAL
{75} SUBJ MATTER: COMMERCIAL
{128} REQUIREMENTS: STATUTORY OR RULES

Gwen Forté, Note, *Rethinking America's Approach to Workplace Safety: A Model for Advancing Safety Issues in the Chemical Industry*, 53 CLEV. ST. L. REV. 513 (2006).

In this note Forté proposes an employee board representation to address workplace injuries in the chemical industry. Forté considers the advantages and disadvantages of tort litigation, workers' compensation, collective bargaining, and the Occupational Safety and Health Act in compensating workplace injuries. She examines various methods of employee board representation, ultimately recommending a method in which an outside professional is hired to be on the board of directors to represent worker safety issues.
{21} MEDIATION—GENERAL
{95} SUBJ MATTER: LABOR—MANAGEMENT (UNION)
{134} DISPUTE PREVENTION
{137} EFFECT OF PROCESS ON NON-PARTICIPATORY PARTIES

Brian D. Weber, Note, *Contractual Waivers of a Right to Jury Trial—Another Option*, 53 CLEV. ST. L. REV. 717 (2006).
Weber explores the constitutional right to a trial by jury and the contractual waiver of those rights. He identifies four criteria applied by courts to test the constitutionality of an employee's contractual waiver of rights. Weber examines mandatory arbitration in the employment context. He suggests that jury trial waivers are more beneficial to employers and employees than both arbitration agreements and full jury trials.
{44} ARBITRATION—GENERAL
{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)
{126} REQUIREMENTS: CONTRACTUAL CLAUSES
{134} DISPUTE PREVENTION

Stuart M. Boyarsky, *The Confirmation of Punitive Awards in Arbitration: Did Due Process Disappear?*, 6 PEPP. DISP. RESOL. L.J. 229 (2006).
This article considers whether confirmation by a court of a arbitrator's award of punitive damages is state action triggering due process protection. After examining several cases, the author concludes that due to an Eleventh Circuit decision, confirmation is not state action. Due to other courts' dissatisfaction with this outcome, the author predicts the continued wrangling over the issue up to the Supreme Court.
{44} ARBITRATION—GENERAL
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD
{102} SUBJ MATTER: PUBLIC POLICY